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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSOCIATED PRESS, *Plaintiff*, v. DEPARTMENT OF DEFENSE, *Defendant*.	05 Civ. 5468 (JSR) **ECF Case** DECLARATION OF REAR ADMIRAL HARRY B. HARRIS, JR.

Pursuant to 28 U.S.C. § 1746, I, Rear Admiral Harry B. Harris, Jr., declare as follows:

1. I am a Rear Admiral Lower Half in the United States Navy, with 28 years of active duty service. I currently serve as the Commander, Joint Task Force - Guantanamo, Guantanamo Bay, Cuba (JTF-GTMO). I have held this position since March 31, 2006. As such, I am directly responsible for the successful execution of the JTF-GTMO mission to conduct detention and interrogation operations and exploit intelligence in support of the Global War on Terrorism (GWOT), coordinate and implement detainee screening operations, and support law enforcement and war crimes investigations. Unless otherwise noted, the statements contained in this declaration are based upon my personal knowledge.

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2. My responsibilities as Commander, JTF-GTMO, include the review of JTF-GTMO information for classification purposes, as mandated by Executive Order (EO) 12958, as amended. I have been designated by the Under Secretary of Defense for Intelligence, Dr. Stephen A. Cambone, as an Original Classification Authority (OCA) at the SECRET level and a declassification authority pursuant to EO 12958, as amended, Sections 1.3 and 3.1. Through my position, I am aware of the substantive requirements within my organization for classifying documents pursuant to this authority. I am also familiar with the requirements for the classification of information under EO 12958, as amended.

Purposes of this Declaration

3. This declaration describes the creation and current classification of assessment and recommendation documents created by JTF-GTMO and its parent command, the United States Southern Command (USSOUTHCOM). It further explains the rationale for withholding portions of these documents, as well as the rationale for withholding certain JTF-GTMO-generated intelligence information contained in a memorandum created by the Criminal Investigation Task Force (CITF) and a summary worksheet created by the Office of Detainee Affairs (DA), from public release under the Freedom of Information Act (FOIA). It also describes the creation of memoranda by USSOUTHCOM regarding detainees determined to no longer meet the definition of enemy combatant, and the rationale for withholding portions of these documents.

Documents Created by USSOUTHCOM for the Pre-ARB Review Process

4. It is my understanding that the Associated Press (AP) has filed a FOIA request for "details and explanations of the decisions made to release or transfer detainees, including the reason why the decision was made." Although I was not the Commander of JTF-GTMO before the creation of the Administrative Review Board (ARB) process in June 2004, I am aware that there was a detainee assessment process in place before the ARB process was implemented.

Through my official duties, I am aware of the details about that process described in paragraphs 5-6, 9 and 11-12, below.

5. Under the pre-ARB review process, individuals detained by the Department of Defense (DoD) at Guantanamo Bay were assessed for potential release or transfer through an interagency process managed by the DA. The decision regarding whether to release or transfer a detainee was made by the Deputy Secretary of Defense (DEPSECDEF). As part of this pre-ARB review process, JTF-GTMO provided an intelligence assessment of the detainees and a recommendation regarding their disposition to DA through USSOUTHCOM. Although the final assessment and recommendation memorandum was signed by USSOUTHCOM personnel, the contents of the memorandum were created using information generated and maintained by JTF-GTMO.[1]

6. The redacted October 20, 2003, Assessment and Recommendation Memorandum attached to this Declaration as Exhibit 1 (hereinafter "USSOUTHCOM memorandum") is a representative sample of such a document created by JTF-GTMO and USSOUTHCOM for a detainee who was ultimately transferred by the DoD. A USSOUTHCOM memorandum typically consisted of three categories of information: (i) background information regarding the detainee (in the attached sample, this information is found in the sections entitled "Personal Information," "Detention Information," and "Reasons for [a Particular Disposition Recommendation]"), including analytical conclusions drawn by JTF-GTMO personnel regarding the detainee (and, in some cases, medical information about the detainee); (ii) an assessment of the detainee's current intelligence value and threat level (in the attached sample, this information is found in the section entitled "Assessment"), and (iii) USSOUTHCOM's recommendation

[1] The name and duty title of the USSOUTHCOM employee who signed this memorandum have been withheld under FOIA Exemptions (b)(3) (pursuant to 10 U.S.C. Section 130(b)) and (b)(6). It is my understanding that the AP is not contesting this withholding.

regarding whether the DoD should transfer, release, or continue to detain the individual (in the attached sample, this information is found in the section entitled "Recommendation").

7. The justification for the information withheld from the USSOUTHCOM memoranda is found in paragraphs 14-28 and 31, below.

CITF's Use of Information Originating from JTF-GTMO as Part of the Pre-ARB Review Process

8. CITF is responsible for the investigation of war crimes potentially committed by individuals detained at Guantanamo Bay. (Individuals who are alleged to have committed war crimes are subject to criminal prosecution by military commission.) CITF often utilizes intelligence information gathered by JTF-GTMO, and other DoD components or agencies, during its investigation of the detainees. When CITF reproduces, extracts, or summarizes JTF-GTMO's classified information in its own internal documents, CITF is required to carry forward pertinent classification markings to any newly created documents. CITF is not permitted to release such derivative information under FOIA and instead must refer the information to the OCA for action, in this case, JTF-GTMO.

9. As part of the pre-ARB review process, CITF often created documents about detainees that included information that originated with JTF-GTMO. The redacted February 3, 2004, memorandum attached to this Declaration as Exhibit 2 ("CITF memorandum") is a representative sample of a CITF document that contains information derived from JTF-GTMO's intelligence-gathering operation. Background information about the detainee that originated with JTF-GTMO is contained in the "Factual Synopsis" section of the CITF memorandum. JTF-GTMO's disposition recommendation is referenced in the "JTF GTMO [ ] recommendations" section of the CITF memorandum and JTF-GTMO's threat assessment is included in the "Threat Assessment" section.

10. The justification for withholding the JTF-GTMO-originating information in the CITF memorandum is found in paragraphs 14-28 and 31, below.

The Office of Detainee Affairs' Use of Information Originating from JTF-GTMO as Part of the Pre-ARB Review Process

11. Intelligence information that originated with JTF-GTMO was also used by the DA as it prepared a package of material for presentation to the DEPSECDEF for his decision on whether to transfer, release, or continue to detain a detainee. This JTF-GTMO information was either included directly in the memorandum provided to the DEPSECDEF or it was included on a worksheet prepared by DA.

12. The undated document attached to this Declaration as Exhibit 3 is a representative sample of a worksheet created by DA that contains information derived from JTF-GTMO's intelligence-gathering operation. JTF-GTMO-generated background information about the detainee is contained in the sections entitled "Circumstance of Capture" and "Background Information." The worksheet also contains a chart that includes USSOUTHCOM's assessments of the detainee's "Intelligence Value" and "Threat/Risk." The "Comment" section of the worksheet also contains USSOUTHCOM's disposition recommendation regarding the detainee.

13. The justification for withholding the JTF-GTMO-originating information in the DA worksheet is found in paragraphs 14-28 and 31, below.

Justification for the Withholding of "Background Information" Under Exemption (b)(1)

14. The background information about a detainee that originated with JTF-GTMO typically describes the detainee's involvement in the GWOT, either through his own reporting or through the reporting of other individuals (sources), including other detainees. The background information found in Exhibits 1, 2 and 3 is typical of the information found in other similar documents created by JTF-GTMO. This information typically provides some general

biographical information on the detainee and then explains how he became affiliated with the Taliban, al Qaeda or associated forces that are engaged in hostilities against the United States or its coalition partners, his training and actions taken in support of those organizations, specific conclusions drawn by analysts about his activities, why he was transferred to Guantanamo, and the circumstances of his capture. In the case of the detainee described in Exhibit 1, the information describes the organization that recruited him to leave his home country in order to travel to Afghanistan and fight against the United States. It also describes the training he received in Afghanistan and the specific hostile actions he took while in Afghanistan, as well as how he was captured. At the time of the FOIA request in this case, this material was classified at the SECRET level through the action of a prior Commander, JTF-GTMO, in his role as an OCA.

15. This background information about the detainee has been withheld under FOIA Exemption (b)(1), which exempts from release matters under FOIA that are "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and … [that] are in fact properly classified pursuant to such Executive order." Section 1.4(c) of EO 12958, as amended, permits the classification of "intelligence activities (including special activities), intelligence sources or methods, or cryptology," recognizing that the disclosure of intelligence activities and sources can cause harm to national security.

16. I have determined that this background information about the detainee and his involvement in the GWOT reveals critical details about intelligence we have gleaned regarding organizations that are engaged in hostilities against the United States or its coalition partners and also that this information reveals the sources of our intelligence. I have further determined that this information remains properly classified and that its release reasonably could be expected to cause serious damage to the national security because it would reveal information concerning an

intelligence source, the specific information obtained from such a source, or both. Accordingly, this information is still properly classified at the SECRET level, pursuant to Section 1.4(c) of EO 12958, as amended.

17. If the United States government publicly released information about our knowledge of the specific recruitment mechanisms of certain organizations and the actions taken by its recruits or if we revealed the specific activities and associations of the detainees, even if no longer in DoD control, this would reveal the extent of the United States' intelligence activities, especially when released information can be assembled together with other released information and reveal a considerable amount of detail about the level of our intelligence about certain individuals and/or organizations. Revealing the extent of information gathered concerning a particular detainee would show what the United States government knows concerning aspects of terrorism and those associated with extremist causes, the nature of the information intelligence organizations have yet to develop, and ongoing leads and efforts of intelligence organizations as they gather intelligence. Ultimately, release of this information would aid those persons hostile to the United States in hiding their activities and finding other means to thwart intelligence-gathering efforts.

18. Additionally, if the background information was released publicly, it would reveal the source of the intelligence at issue in the document. In the case of the detainee discussed in the sample memorandum, release of this background information would reveal that he served as the source of certain intelligence information about a specific organization that recruited him into fighting jihad against the United States and its coalition partners, as well as the fact that he provided certain specific information about his involvement with the Taliban. The public release of such information, even for individuals who are no longer held at Guantanamo Bay, will have a chilling effect on human intelligence collection and substantially impede the DoD's ability to

gather actionable intelligence from detainees currently held at Guantanamo Bay. Releasing this information would reveal to the world the cooperation that detainees have provided to interrogators at Guantanamo Bay. In some cases, it would also reveal that other sources, including other detainees, had provided intelligence information about the detainee, ultimately placing the source, or perceived source, at risk of harm.

19. Human intelligence is the most essential piece of the strategic intelligence being gathered in the GWOT. Because of the nature of terrorist organizations, such as al Qaeda, the terrorist organizations' methods of operation, and the affiliations between terrorist organizations, human intelligence is the most effective source of actionable information for the anticipation and interdiction of terrorist activity.

20. The cooperation of human intelligence sources in gathering actionable information is an indispensable requirement in the fight against terrorist activity. The process of gaining actionable intelligence from a human intelligence source is built around trust and confidentiality. Cooperating subjects simply will not provide information if they believe that, in doing so, they will jeopardize their own safety, or the safety of their families and loved ones. A key part of their comfort in providing information is a sense of anonymity. The release of the information that detainees provided to the United States government, along with the identifying information about the detainee, would eliminate any anonymity the detainees may have had.

21. Cooperating detainees at JTF-GTMO have specifically voiced concerns for their families' safety, as well as their own, as a result of their cooperation or perceived cooperation with the United States government. In fact, some of the detainees have used multiple names and aliases in the past to conceal their real identities. Detainees who have provided information to the United States government have an implicit, and in many cases explicit, expectation that their identities and statements will not be revealed to the general public. Detainees who provide

information to United States government personnel often request that they not be associated with the information they are providing or identified as the source of this information based on a fear of retaliation, embarrassment, and harm to themselves and members of their family.

22. These concerns are particularly acute in cases of persons who are linked to terrorist activity. Intelligence sources can be expected to furnish information only when confident that they are protected from retribution by the absolute secrecy surrounding their relationship to the United States government. Alleviating cooperating individuals' perceived or genuine concerns about reprisal is an essential part of developing human intelligence sources and gathering useable information. Releasing information provided by these sources would dissuade them, and future sources, from cooperating in the future.

Justification for the Withholding of Intelligence Value and Threat Assessments Under Exemptions (b)(1) and (b)(2)

23. The assessment section of the USSOUTHCOM memorandum contains the conclusions reached by analysts regarding the Intelligence Value of the detainee and Threat Assessment for that detainee. This information is also referenced in the CITF memorandum and in the worksheet created by the DA.

24. At the time of the FOIA request in this case, this material was classified at the SECRET level through the action of a prior Commander, JTF-GTMO, in his role as an OCA.

25. JTF-GTMO/USSOUTHCOM's assessment of the Intelligence Value and Threat posed by a particular detainee has been withheld under FOIA exemption (b)(1). I have determined that this information reveals the type of information that is of particular interest to United States government personnel in assessing detainees and that it reveals specific conclusions that were reached regarding the information therein. Additionally, release of these assessments in conjunction with release of the factual information that was utilized by JTF-

GTMO/USSOUTHCOM personnel in reaching these conclusions would show how analysts evaluate the relative value of certain intelligence and threat information. I have further determined that this information remains properly classified and that its release reasonably could be expected to cause serious damage to the national security because it would reveal that critical information. Accordingly, this information is still properly classified at the SECRET level, pursuant to Section 1.4(c) of EO 12958, as amended.

26. Furthermore, I have determined that this information should be withheld under FOIA Exemption (b)(2) (high) because it would disclose the internal guidelines followed by JTF-GTMO and USSOUTHCOM in evaluating the relative intelligence value and threat level of individual detainees. The JTF-GTMO/USSOUTHCOM assessment is the end result of a process that has involved months to years of intelligence collection on a particular individual. Intelligence sources and methods are inherently used in this process. If this information were publicly released, a skilled and knowledgeable individual could put together patterns of intelligence that are important to the United States government and glean information regarding how this intelligence is obtained, and then take steps to counter or thwart our intelligence-gathering means and methods. Ultimately, this would damage U.S. national security.

Justification for the Withholding of JTF-GTMO/USSOUTHCOM's Disposition Recommendation Under Exemption (b)(5)

27. The three exhibits also contain the recommendations of JTF-GTMO and USSOUTHCOM regarding whether the detainee should be released, transferred, or continued in detention.

28. I have determined that this recommendation should be withheld under FOIA Exemption (b)(5) because its public release would discourage open and frank discussions between JTF-GTMO/USSOUTHCOM and their superior organizations within DoD. Our

internal recommendations were provided to the DEPSECDEF before he made a decision regarding the disposition of the detainee. If these recommendations are publicly disclosed through the FOIA process, those involved in formulating such recommendations in the future would be dissuaded from providing complete, candid opinions and recommendations, due to fear that such opinions and recommendations may be made public. This would seriously erode the free exchange of information within and between our organizations and other DoD organizations. Furthermore, the recommendations and analyses of various DoD components and agencies are provided to the DEPSECDEF for his consideration in deciding whether to transfer, release, or continue to detain a detainee, and such components and agencies do not always concur. Accordingly, the reasons and rationales for JTF-GTMO/USSOUTHCOM's recommendations may not be those that ultimately served as the basis for the DEPSECDEF's decision regarding the detainee.

Documents Created by USSOUTHCOM Regarding Detainees Determined To No Longer Be Enemy Combatants

29. In March 2004, it was determined that 29 detainees being held at Guantanamo Bay no longer met the definition of "enemy combatant," based on a review of the information currently available to DoD at that time. For each detainee, USSOUTHCOM created a memorandum that contained information regarding the detainee's background and analytical conclusions reached by JTF-GTMO regarding that background. The redacted memorandum attached to this Declaration as Exhibit 4 is a representative sample of these memoranda. (Although I was not the Commander of JTF-GTMO in March 2004, as part of my official duties, I have become aware of the above details about this situation.)

30. This memorandum contains background information on the detainee, which is withheld for the reasons stated in paragraphs 14-22 above. Even though the detainees at issue in

these memoranda were deemed to no longer meet the definition of "enemy combatant" at the time the memorandum was written, the memorandum still summarizes intelligence information received from the detainee and, in some cases, other sources, and thus reveals his cooperation (or lack of cooperation) with interrogators.

Withholding of Full Internment Serial Number from the Exhibits

31. The full Internment Serial Number ("ISN") for the detainee is found throughout the USSOUTHCOM memorandum and is also cited in the CITF and DA documents regarding the detainee. Each detainee at JTF-GTMO is assigned an ISN. I have determined that the full ISN should be withheld under Exemption (b)(2) (high) as the non-numeric portion of this number contains information specific to the detainee that is used to identify certain information pertinent to detainee operations and intelligence-gathering operations. Furthermore, the full ISN number is often used in intelligence message traffic and reports to identify a particular detainee as a source for information. Disclosure of the full ISN number to the public could allow persons to potentially access information concerning detainees from DoD databases and other sources and then cross-reference these detainee numbers with other information in the public domain to identify specific detainees, DoD personnel associated with detainee operations and intelligence gathering activities, and other individuals mentioned in other DoD documents. Access to this information, much of it classified, would have the effect of impeding JTF-GTMO detention and intelligence gathering operations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of August, 2006.

HARRY B. HARRIS, JR.
Rear Admiral, US Navy
Commanding